

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

David Harley,) Civil Action No. 8:20-3713-BHH
)
Plaintiff,)
)
v.)
)
Ms. Nanette Barnes, *Warden*; John Doe,)
Mailroom Employee; *Mailroom*; Mr. J.)
Bullard, *Correctional Systems Officer*,)
)
Defendants.)
)

ORDER

This matter is before the Court upon Plaintiff's *pro se* complaint filed pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). On April 5, 2021, Defendants filed a motion to dismiss or, in the alternative, for summary judgment. (ECF No. 42.) On May 26, 2021, Plaintiff filed a response in opposition (ECF No. 55), and subsequently two supplements (ECF Nos. 58,63.) Plaintiff also filed a motion to amend his Complaint. (ECF No. 56.) On June 7, 2021, Defendants filed a response in opposition to Plaintiff's motion to amend complaint (ECF No. 60), and on June 21, 2021, Plaintiff filed a reply (ECF No. 67).

A United States Magistrate Judge, in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2) (D.S.C.), entered a report and recommendation ("Report") recommending that Defendant's motion to dismiss, or in the alternative for summary judgment (ECF No. 42) be granted, and that Plaintiff's motion to amend his complaint (ECF No. 56) be denied. (ECF No. 69.) That Report was initially filed and mailed to Plaintiff on July 12, 2021. (ECF No. 70.) The Report did not have the notice advising Plaintiff of the right to file written objections attached, so another Report with the notice was mailed on August 5, 2021. (ECF No. 76.) That notice advised Plaintiff of the right to file written objections to the Report within fourteen days of being served with a copy.

The Magistrate Judge makes only a recommendation to the Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a *de novo* determination only of those portions of the Report to which specific objections are made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of specific objections, the Court reviews the matter only for clear error. See *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” (quoting Fed. R. Civ. P. 72 advisory committee’s note)).

Here, because no objections were filed, the Court has reviewed the record, the applicable law, and the findings and recommendations of the Magistrate Judge for clear error. After review, the Court finds no error and agrees with the Magistrate Judge’s conclusions. Accordingly, the Court adopts and incorporates the Magistrate Judge’s Report (ECF No. 69), and the Court grants Defendant’s motion to dismiss (ECF No. 42). Plaintiff’s motion to amend his complaint (ECF No. 56) is hereby denied.

IT IS SO ORDERED.

/s/Bruce H. Hendricks
United States District Judge

October 20, 2021
Charleston, South Carolina

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified that any right to appeal this Order is governed by Rules 3 and 4 of the Federal Rules of Appellate Procedure.